

Notice of Allowability

Application No.

10/690,050

Applicant(s)

NAGEL, CHRISTOPHER J.

Examiner

Mark Kopec

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amend filed 02/21/07 and Int. Summ. of 03/15/07.
2. ☒ The allowed claim(s) is/are 14-27.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Mark Kopec
Primary Examiner

Art Unit: 1751

This action is responsive to applicant's amendment filed 02/21/07. Claims 1, 3, 6, 7, and 9-13 are currently pending.

The Terminal Disclaimer filed 02/21/07 is entered.

The 1.132 Declaration filed 02/21/07 is entered.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Update the CON data at **page 1** of the specification to the following:

--This application is a divisional of U.S. Ser. No. 10/123,028, filed Apr. 12, 2002, now U.S. 6,921,497, which is a continuation-in-part of U.S. Ser. No. 09/416,720, filed Oct. 13, 1999, now U.S. Pat. No. 6,572,792, issued Jun. 3, 2003, and a continuation-in-part of International Application No. PCT/US00/28549, which designated the United States and was filed on Oct. 13, 2000, published in English, which is a continuation of U.S. Ser. No. 09/416,720, filed Oct. 13, 1999. The entire teachings of the above applications are incorporated herein by reference.--.

Art Unit: 1751

Cancel claims **1, 3, 6, 7, and 9-13.**

Add the following **new claims:**

--14 (new). A composition comprising gold, silver, tin, lead, zinc, sodium, magnesium, potassium, vanadium, chromium, manganese, tantalum, hafnium, tungsten or alloys thereof, characterized by an X-ray fluorescence analysis report wherein the report recites the presence of an element in the periodic table wherein said composition has not been in contact with said element and is manufactured by exposing a starting composition to an iterative cyclic process in the presence of a carbon source.--.

--15 (new). A composition comprising gold, silver, tin, lead, zinc, sodium, magnesium, potassium, vanadium, chromium, manganese, tantalum, hafnium, tungsten or alloys thereof, characterized by an X-ray fluorescence analysis wherein the analysis recites an emission detected at room temperature indicating the presence of an element in the periodic table wherein said composition has not been in contact with said element and is manufactured by exposing a starting composition to an iterative cyclic process in the presence of a carbon source.--.

--16 (new). The composition of claim 14 or claim 15, wherein said composition comprises gold or alloys thereof.-
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Art Unit: 1751

--17 (new). The composition of claim 14 or claim 15, wherein said composition comprises silver or alloys thereof.--.

--18 (new). The composition of claim 14 or claim 15, wherein said composition comprises tin or alloys thereof.--

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--19 (new). The composition of claim 14 or claim 15, wherein said composition comprises lead or alloys thereof.--

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--20 (new). The composition of claim 14 or claim 15, wherein said composition comprises zinc or alloys thereof.--

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--21 (new). The composition of claim 14 or claim 15, wherein said composition comprises sodium or alloys thereof.--.

--22 (new). The composition of claim 14 or claim 15, wherein said composition comprises vanadium or alloys thereof.--.

--23 (new). The composition of claim 14 or claim 15, wherein said composition comprises chromium or alloys thereof.--.

Art Unit: 1751

--24 (new). The composition of claim 14 or claim 15, wherein said composition comprises manganese or alloys thereof.--.

--25 (new). The composition of claim 14 or claim 15, wherein said composition comprises tantalum or alloys thereof.--.

--26 (new). The composition of claim 14 or claim 15, wherein said composition comprises hafnium or alloys thereof.--.

--27 (new). The composition of claim 14 or claim 15, wherein said composition comprises tungsten or alloys thereof.--.

Authorization for this examiner's amendment was given in a telephone interview with Carolyn S. Elmore on 03/15/07.

The following is an examiner's statement of reasons for allowance:

The instant claims have been added to recite each of the elements/alloys disclosed in the inventive examples of the specification.

With respect to instant claims 14-27, the 1.132 Declaration filed 02/21/07 corrects the deficiencies of the earlier filed 1.132 Declaration (06/02/06). Specifically, applicant has clearly set forth the detailed procedure used to produce each of

Art Unit: 1751

the independently tested samples, as well as a complete discussion of the analytical techniques utilized during testing. The manufacturer's specification(s) and GD-MS analysis of the starting materials is also provided.

Applicant's description of "cycle" and "cyclic process" at pages 15-17 of the instant specification are noted. After consideration of the evidence as a whole, including the many factors discussed in detail in *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988), the examiner agrees applicant has demonstrated that the disclosure as filed (as evidenced by the submitted 1.132 Declaration) would have enabled the skilled artisan to make and use claimed invention.

It should be noted that the instant claims are drawn to existing materials that exhibit novel properties. As acknowledged by applicant in the response filed 10/30/06:

The applicant has presented 14 working examples with detailed XRF analysis that showed each of the manufactured ingots contains a different elemental signature from its corresponding natural occurring metal state. **There is no basis to conclude that the result is explained by impurities or the transmutation of metals. The manufactured ingots are still the same starting material,** but exhibit different electronic state scans from the original precursor in the GMS, XRF, PIXE, and GDOES analysis. Confirmation of these analysis from third party companies for the copper ingot is attached as a 1.132 Declaration (emphasis added).

Art Unit: 1751

As is evident from the prosecution history of this application and the parent application(s), the instant application disclosure proposes unproven scientific theory that may be construed as contrary to commonly accepted theories regarding quantum mechanics and interactions between various forms of matter. The instantly proposed theory includes changing the atomic orbitals of matter, as well as the introduction and definition of the terms "zurn" and "isozurn". However, differences between the claimed materials and the prior art materials could be result of atomic interactions which may be described and predicted by the current and well-explored theories regarding the behavior of materials.

Allowance of the instant claims should not be construed as a validation by the United States Patent Office of applicant's unproved scientific theories. Applicant has demonstrated that the claimed materials (produced by specific heating and cooling operations under particular atmospheric conditions) are patentably different from the prior art of record. The provided 1.132 Declaration discloses third party confirmation of the claimed properties. The instant claims are enabled as the skilled artisan could follow the disclosed heating and cooling steps delineated by applicant in order to make and use the instantly claimed materials. Furthermore, the invention has at

Art Unit: 1751


least one credible utility as disclosed in the specification and prior art. See, e.g., *Raytheon v. Roper*, 724 F.2d 951, 958, 220 USPQ 592, 598 (Fed. Cir. 1983), cert. denied, 469 U.S. 835 (1984).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Kopec whose telephone number is (571) 272-1319. The examiner can normally be reached on Monday - Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Mark Kopec
Primary Examiner
Art Unit 1751

MK
March 15, 2007